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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re K.S., a Person Coming Under the
Juvenile Court Law.

B248817

(Los Angeles County
Super. Ct. No. CK98026)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

KIANA S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Jacqueline Lewis, Juvenile Court Referee, Affirmed.

Terence M. Chucas, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

Kiana S. appeals from the juvenile court's order at the disposition hearing placing her then-six-week-old son, K.S., with the Los Angeles County Department of Children and Family Services (Department) for suitable placement, rather than with the child's maternal grandmother, L.R. Kiana does not challenge the court's finding that K.S. is a child described by Welfare and Institutions Code section 300, subdivision (b),¹ or its order removing K.S. from her custody based on Kiana's current abuse of cocaine and opiates and use of illicit drugs during her pregnancy, which resulted in K.S. being born with a positive toxicology screen for cocaine and opiates. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Petition and Removal Order

Kiana, then only 18 years old, pleaded no contest to an amended section 300, subdivision (b), dependency petition alleging her infant son, K.S., was born "suffering from a detrimental condition. Such condition consists of a positive toxicology screen for cocaine and opiates. In addition, the child [K.S.'s] mother, Kiana S[.], has a history of illicit drug abuse including marijuana, and is a current abuser of cocaine and opiates, which periodically render the mother incapable of providing regular care of the child. The mother used illicit drugs during the mother's pregnancy with the child. On [the day before K.S.'s birth,] the mother had a positive toxicology screen for cocaine. The mother's use of illicit drugs endangers the child's physical health and safety and creates a detrimental home environment, placing the child at risk of physical harm and damage." The child's father was listed as "Identity Unknown" in the petition and referred to as "Fred aka Frederick" with an "address unknown" in the Department's jurisdiction/disposition report.²

¹ Statutory references are to the Welfare and Institutions Code.

² The report stated results were still pending on the Department's due diligence efforts to locate the father; Kiana had said she "knows him from the neighborhood" but did not have an address or telephone number for him; and the maternal grandmother stated she did not know anything about the child's father.

The court sustained the petition and found by clear and convincing evidence there was a substantial danger to the child's physical health, safety, protection, physical and emotional well-being if the child were returned home. The court further found there were no reasonable means to protect the child without removing him from the parents' physical custody, ordered the child removed from both parents and placed the care, custody and control of the child under the supervision of the Department for suitable placement in foster care. The court made a referral for K.S. to a Regional Center and provided family reunification services for Kiana; no reunification services were ordered for Fred, who at this point was only an alleged father.

2. Kiana's Request for Placement of K.S. with His Maternal Grandmother

The record is unclear whether Kiana was residing with her mother L.R. at the time the matter was referred to the Department because of Kiana's drug abuse and the danger to her newborn son. Kiana claimed she was living with two elderly cousins although, when interviewed, a maternal great aunt disputed that fact; and the caller who reported the problem said Kiana was living with L.R. In any event, in her first interview with the Department, L.R. acknowledged she was aware of Kiana's cocaine use but believed Kiana had stopped using when she became pregnant. L.R. also reported that she had had difficulty with Kiana during her teenage years due to mental health issues and Kiana's struggles with her sexuality. Kiana had been diagnosed with bipolar mood disorder, and L.R. indicated Kiana had been hospitalized numerous times due to her suicidal ideations.

At the detention hearing the juvenile court ordered the Department to prepare a pre-release investigation report on L.R. as a possible caregiver for K.S. In its initial report the Department stated it had advised L.R., based on the results of a records check through live scan fingerprinting, a criminal waiver would be required for her home to be approved. (See § 361.4, subd. (d).) After initially denying any knowledge of a criminal history, L.R. eventually admitted she had "some interaction" with law enforcement in

Kansas while living there.³ However, she explained she had resided in California for the past five years and had no involvement with the criminal justice system during that time. She agreed to cooperate in obtaining the relevant records from Kansas for the Department to evaluate. The Department requested additional time to assess the possible placement of K.S. with his maternal grandmother.

The Department again interviewed L.R. in connection with its preparation of the jurisdiction/disposition report. At this point L.R. claimed, although she knew Kiana had been using marijuana for approximately three years, she did not know about her cocaine abuse. L.R. stated Kiana had been hospitalized in both California and Kansas and told the dependency investigator she had participated in numerous court hearings on Kiana's behalf but was unable to provide any of the court orders from the Kansas proceedings including those relating to Kiana's placement in foster care in that state. L.R. explained that Kiana had run away from home when she was 14 or 15 years old after the family moved from Kansas to California. Kiana was ultimately detained and placed in foster care in Kansas. Because of the lack of information the Department advised the court it was unable to fully assess whether placement of K.S. in L.R.'s home would be appropriate. Nonetheless, the Department stated it was unable to recommend placement in L.R.'s home "as it is likely mother will have unlimited access to the child. Maternal grandmother appears concerned with preserving a relationship with mother more than keeping the child safe."

In a last-minute-information report prior to the jurisdiction and disposition hearing, the Department reviewed information it had received from child protective services and probation office representatives in Kansas responsible for supervising Kiana. According to these individuals, Kiana had repeatedly engaged in run-away behavior,

³ The criminal history attached to the Department's report reflected a 1998 arrest on theft and obstruction charges and a 2007 arrest for an undefined property offense and a failure to appear. Nothing in the record suggests that L.R. was convicted of a criminal offense or that a criminal conviction exemption under section 361.4 was actually required.

leaving her placements without permission and, as a result, had an outstanding arrest warrant in the state.⁴ With respect to L.R. the probation representative indicated Kiana came to the attention of the Kansas authorities due to L.R.'s inability to appropriately care for her. "[A] referral was generated after maternal grandmother left the state of Kansas to return to California without Mother." Apparently, Kiana failed to show up at the airport as planned. L.R. then left the state without making a plan for Kiana's supervision. The probation representative further stated L.R. "would allow mother to AWOL to California. She never contacted us to report mother was in her home. She never provided us with an address." The representative opined that L.R. had not assumed a parental role in Kiana's life.

After the jurisdiction phase of the hearing, counsel for the Department submitted a case plan based on the recommendations in the jurisdiction/disposition report. K.S.'s counsel submitted on the case plan and urged the court not to place the child with L.R. Kiana, through her counsel, again requested K.S. be placed with L.R., arguing that the case in Kansas, as reflected in the information provided by the Department, "revolved considerably around mother's behavior and her AWOL'ing and her criminal activities, or what she was engaged in. And mother acknowledges that she had a lot of issues as a teenager." Counsel represented that she had confirmed with both L.R. and Kiana that Kiana was actually living with an aunt in Kansas, not left by L.R. on her own, and that L.R. returned to Kansas several times to participate in proceedings after child protective services intervened in the matter. In addition, counsel emphasized L.R. had been raising four other children without any issues of neglect or abuse.⁵

⁴ Kiana had been ordered by the Kansas court to complete a substance abuse program and participate in mental health services.

⁵ In September 2011 the Department received a referral alleging L.R. was permitting Kiana to sell drugs from the family home. The referral was ultimately deemed "unfounded."

The court declined to place K.S. with L.R., expressly noting it had considered such a placement pursuant to the statutory provisions preferring relative placement. “It’s very clear to me, especially from today’s last minute information, while the other case did have to do with mother’s chronic running-away behavior, that the maternal grandmother has absolutely no ability, first of all, to control the mother, did not appropriately make the phone calls she needed to when mother would come to her house, and I – indicated she didn’t know anything about, you know, mother’s, really, mental health or her substance abuse issues, leaving me to believe she didn’t really know what was going on with that case.” The court concluded, under sections 361.3 and 361.4, that L.R. was unable to protect K.S. from the mother.

DISCUSSION

1. The Statutory Preference for Relative Placement and the Standard of Review

Under section 361.3, subdivision (a), “preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative” when a child is removed from the physical custody of his or her parents pursuant to section 361. In determining whether placement with a relative is appropriate, the Department and the juvenile court are to consider, among other factors, “(1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs. [¶] (2) The wishes of the parent, the relative, and the child, if appropriate. [¶] . . . [¶] (5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect. [¶] (6) The nature and duration of the relationship between the child and the relative” (*Ibid.*)

“‘Preferential consideration’ means that the relative seeking placement shall be the first placement to be considered and investigated.” (§ 361.3, subd. (c)(1).) The relatives entitled to preferential consideration for placement are “an adult who is a grandparent, aunt, uncle, or sibling.” (§ 361.3, subd. (c)(2).)

We review the juvenile court's decision on relative placement for abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067 ["We are persuaded that the abuse of discretion standard should be applied to the review on appeal of the juvenile court's determination regarding relative placement pursuant to section 361.3. Such a determination, like decisions in custody cases, involves primarily factual matters and a judgment whether the ruling rests on a reasonable basis."]; accord, *In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1420 ["juvenile court's placement orders are reviewed under the abuse of discretion standard; the court is given wide discretion and its determination will not be disturbed absent a manifest showing of abuse"].)

2. *The Juvenile Court Did Not Abuse Its Discretion in Declining To Place K.S. with His Maternal Grandmother*

Using the governing reasonableness standard, we find no abuse of discretion here: "The relative placement preference . . . is not a relative placement *guarantee*" (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798.)

The evidence before the juvenile court established L.R. either knew Kiana was abusing cocaine and failed to take adequate steps to address the problem or was so out of touch with her teenage daughter that she was unaware of her ongoing cocaine use. In addition, although L.R. acknowledged Kiana's multiple hospitalizations for suicidal ideation, Kiana told the social workers she had not received mental health treatment for more than a year and did not believe she needed it notwithstanding her bipolar mood disorder diagnosis and prescriptions (apparently unused) for psychotropic medication. Again, the evidence was that L.R. either largely ignored the problem or was unaware of its seriousness. These matters, together with the reports from Kansas regarding L.R.'s failure to provide an appropriate plan for supervision of Kiana, demonstrated L.R.'s inability to respond to Kiana's needs and problems and reasonably led to the conclusion she would be unable to care for K.S. and to protect him from Kiana during the reunification period.

This conclusion is reinforced by other evidence, marshaled by the Department in its jurisdiction/disposition report, that L.R. seemed more concerned about her relationship

with Kiana than ensuring K.S.'s safety. During visits after K.S.'s detention, Kiana was accompanied by both L.R. and a man named Fred. Whether or not this individual was K.S.'s alleged father, surely something that should have been of interest to L.R.,⁶ L.R. claimed she knew nothing about him and apparently did not question his identity or the reason for his presence because, in her own words, she did not "want to say the wrong thing."

It is true, as Kiana argues, that L.R. has raised four other children without any intervention by the Department or other child protection agencies and that Kiana herself bears a large measure of responsibility for her ongoing substance abuse and self-destructive behavior. Nonetheless, the juvenile court was plainly aware of section 361.3 and considered the factors set out in that provision for evaluating a proposed relative placement. Its ruling that placement of J.S. with L.R. would not be in his best interest was well within its ample discretion.

DISPOSITION

The juvenile court's order is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.

⁶ Kiana has at times claimed K.S. was conceived through rape; yet even this charge apparently did not motivate L.R. to raise questions about the man visiting with her infant grandson.